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Purchasing Disparity Study Proposal Response and Project Plan *for* Jersey City, New Jersey

**RESPONSE TO RFP CITY OF JERSEY CITY WORK SPECIFICATIONS PURCHASING
DISPARITY STUDY (NOVEMBER 2018)**



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**Response to RFP CITY OF JERSEY CITY WORK SPECIFICATIONS PURCHASING DISPARITY STUDY
(November 2018)**

Purchasing Disparity Study

Prepared for

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December 6, 2018

Soraya Hebron
Chief Officer
Office of Diversity and Inclusion
13-15 Linden Avenue East
Jersey City, New Jersey 07305

**Re: RFP CITY OF JERSEY CITY WORK SPECIFICATIONS PURCHASING DISPARITY STUDY
(November 2018)**

Dear Ms. Hebron:

Rutgers, The State University of New Jersey, Rutgers Business School, Supply Chain Management Department, and the Public Private Community Partnerships (RBS-PPCPP) is pleased to submit this proposal to conduct a comprehensive disparity study for the City of Jersey City (the City). The Rutgers Business School's PPCP program was established to demonstrate the potential of enhancing opportunities of communities for sustainable strategic on-off campus partnerships for local income enhancement, sustainable livelihoods and participatory development across all sectors and topics. Dr. Lyons has worked in and conducted purchasing disparity research for over 30 years and will bring that level of expertise and experience to this project.

RBS-PPCP carefully selected its project team to provide unparalleled expertise in purchasing disparity studies; across all SBA diverse supplier categories, including minority-and woman-owned, veteran, and LGBT-owned business programs; community engagement, social and economic impacts as well as integrating and quantifying social determinants of health using buy local strategies; and relevant case law and regulations. Our project team has a strong presence in the Metro NJ/NY region and is deeply rooted in the local business community. We have addressed all of the requirements stated in the City's Request for Proposals (RFP). We have submitted one original copy of our proposal as well as five additional copies and one electronic copy. We have also included cost proposals under separate cover.

As the Director of RBS-PPCP and Project PI, I am authorized to commit our Department to the obligations contained in our response to the City's RFP. By signing and submitting this response, I indicate the intention of RBS-PPCP to adhere to the provisions described in the RFP and a commitment to enter into a mutually binding contract with the City. We look forward to the possibility of partnering with the City to complete this *very* important study. Please contact me directly with any comments or questions (973-353-3347, klyons@business.rutgers.edu)

Sincerely,

Kevin Lyons, Ph.D.
Director, RBS-PPCP
Associate Professor PP, Supply Chain Management



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Note: Assumptions and Risks are integrated into the Project Workplan and Key Dates and Deliverables



A – Executive Summary

The Rutgers Business School Public Private Community Partnerships (RBS-PPCPP) intends to conduct a comprehensive disparity study for the City of Jersey City. RBS-PPCP is assessing disparities between the participation and availability of minority, woman, veteran, LGBT-owned businesses across all commodity and professional services categories that are part of the purchasing and acquisition process for the City. It is our goal that the City will use information from the study (the final report) to refine ordinances, regulations, policies and purchasing processes to aggressively cultivate, build the capacity, competitively bid, and award contracts with minority, woman, veteran, LGBT-owned businesses. As appropriate, we will use information from the previous City of Jersey City disparity study to gain knowledge and augment information that we collect as part of the 2019 Jersey City study, which will result in substantial insight and time savings with no effects on the integrity of the research. Using key criteria of the previous study and our own research, the new 2019 study we will conduct will include:

- Legal framework and analysis;
- Utilization analysis;
- Availability analysis;
- Quantitative analysis of marketplace conditions; and
- Qualitative analysis of anecdotal information.

B - Background

A Disparity Study determines whether a government entity, either in the past or currently, engages in exclusionary practices in the solicitation and award of contracts to minority, and women-owned, and disadvantaged business enterprises (MWDBEs). In 2006 the City of Jersey City commissioned a disparity study to determine if there is disparity between the availability of firms and the utilization of those firms in its market area. RBS-PPCP believes the study is necessitated in part by the 1989 U.S. Supreme Court's decision in the case of *City of Richmond v. J.A. Croson*. The court decision imposed legal requirements on jurisdictions to establish a "compelling interest" to support the establishment of a minority and women business program. The results of this study will determine and support the compelling interest for the continuation of the City's supplier diversity program.



C - Scope

The 2019 the City of Jersey City Disparity Study will include a comprehensive analysis of:

- The percentage of total relevant construction, professional services, goods, and other services contract dollars that minority-, woman-, disabled-, veteran-, and LGBT-owned businesses received on prime contracts and subcontracts between July 1, 2013 and June 30, 2018 (referred to as utilization);
- The percentage of dollars that those businesses would be expected to receive based on their availability to perform work on such prime contracts and subcontracts (referred to as availability);
- Any differences between the participation of minority-, woman-, disabled-, veteran-, and LGBT-owned businesses in relevant contracts and the availability of those businesses to perform that work (referred to as disparities);
- Legal considerations surrounding implementations of the City of Jersey City's Supplier Diversity program;
- Marketplace conditions for disadvantaged businesses;
- Contracting practices and assistance programs that the City of Jersey City currently has in place; and
- Potential program measures that the City of Jersey City could consider implementing as part of its implementation of the City's Supplier Diversity Program.

The RBS-PPCP will establish that disparity be calculated in the form of an index. The disparity index is a ratio of the percentage of utilization and the percentage of availability of M/WBE firms. If the disparity index is 100, the utilization of M/WBE is leveled with the availability of M/WBEs in the market area. If the index is less than 80, it indicates that M/WBEs are significantly underutilized by an entity based on availability. Indices between 80 and 100 - which is close to full participation indicates underutilization though not significant. The participation of stakeholders and business owners is crucial to the Disparity Study's success. RBS-PPCP will conduct stakeholder meetings, business owner interviews, sending surveys and holding focus groups throughout the course of the Study to gather information; local business owners and stakeholders are encouraged to attend.

The Disparity Study shall fulfill the elements that are necessary to maintain consistency with the law articulated by controlling courts; namely, if the analysis shows evidence of discriminatory practices, that there is correspondingly a strong evidentiary basis for implementing any racial or gender-conscious aspects that are narrowly tailored to serve compelling governmental interests. We request that the City's legal counsel closely consult with RBS-PPCP to discuss the legal requisites of each entity to ensure RBS-PPCP understands the controlling law, and the Disparity Study services meet the applicable legal standard. To that end, RBS-PPCP shall utilize the methodologies outlined (below) and in the Model Disparity Study found in NCHRP Report 644, Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program, to the extent that the guidelines do not conflict with this RFP.



D - Objectives

One of the primary purposes of this 2019 disparity study is to examine whether there are disparities between two factors:

- The percentage of total procurement and contracting dollars that minority- and woman-owned, veteran, and LGBT businesses received from Jersey City between July 1, 2013, and June 30, 2018 (referred to as a utilization analysis); and
- The percentage of dollars that minority- and woman-owned, veteran, and LGBT businesses would be expected to receive based on their availability to obtain and perform contracted work with the City (referred to as an availability analysis).

In addition, RBS-PPCP will examine other qualitative and quantitative information related to several other factors:

- Marketplace conditions for minority- and woman-owned, veteran, and LGBT businesses;
- Contracting practices and assistance programs that Jersey City currently has in place;
- Legal considerations surrounding Jersey City's implementation of their supplier diversity program (utilizing the disparity study recommendations/guidelines);
- Assisting Jersey City set its overall DBE participation goal; and
- Potential program measures for Jersey City to consider implementing as part of the DBE program.

Information collected through the study will help Jersey City plan and implement its programs for minority- and woman-owned, veteran, and LGBT business participation. The study will provide:

An independent, objective review of minority- and woman-owned, veteran, and LGBT business participation in Jersey City's procurement and contracting process and contracts. This information will be valuable to Jersey City's leadership and to external groups that may be monitoring the City's contracting practices;

Information that is useful for setting Jersey City's overall DBE goals;

Information that is useful for fine-tuning implementations of all the goals and projects under the City's Supplier Diversity Program; and

Insights about how Jersey City might improve contracting opportunities for local businesses, many of which are minority- and woman-owned, veteran, and LGBT-owned businesses.

E – Project Approach

RBS-PPCP's approach to conducting disparity research and studies will provide substantial value to



the City of Jersey City (the City) as it gathers information to refine its implementation of the Minority and Women Business Enterprise (MWBE), Veteran and LGBT Programs and address any barriers that minority, woman, veteran and LGBT-owned businesses face with respect to City contracting. Our procurement and legal expertise; our custom census approach to measuring availability; our experience working in New Jersey; and our expertise participating in disparity studies for cities and other organizations across the country make us uniquely qualified to conduct the 2019 City of Jersey City Disparity Study.

The methodology that we will use for the City's disparity study and recommendations that we make will be consistent with current legal guidance as well as federal, state, and local regulations that are relevant to the City's use of race- and gender-conscious program measures. We believe that the City can be confident that RBS-PPCP will deliver a disparity study that provides sound, accurate information that will allow implementation of the MWBE Program in accordance with Jersey City and State policies and regulations.

Field Research and Custom census availability analysis. RBS-PPCP field research and uses a custom census approach to measuring availability. In addition to field research (door-to-door data collection), and as part of the availability analysis, we will attempt to contact *all* potentially available businesses—not just a sample of them—within relevant subindustries and within Jersey City to assess whether they are potentially available for City contracts. Both approaches are the *only* ways to ensure that the resulting availability estimates are as accurate as possible. In addition, RBS-PPCP accounts for the relative capacity of businesses when measuring availability. Our methodology for accounting for capacity goes further than that of any other disparity study researcher. Other firms' approaches often fail because they do not dedicate the resources or the research expertise necessary to conduct a proper availability analysis. The Ninth Circuit of Appeals in the *AGC, San Diego vs. Caltrans* case found availability approach to be much more comprehensive than analyses that have previously failed. Our approach to measuring availability was also strongly approved by USDOT and USDOJ, who specifically cited the fact that availability analysis “[took] into account factors that may affect the relative capacity of DBEs to undertake contracting work” in stating their approval.

New Jersey experience. RBS-PPCP has extensive experience working in New Jersey both in the public sector and the private sector. Most notably, we are currently conducting a comprehensive disparity study for the City of Newark as part of the Newark 2020, Buy Local program that Dr. Lyons is currently managing ... this is a program to help the City of Newark refine their implementation of the Newark Business Inclusion (CBI) Program and the Minority, Women, and Small Business Enterprises (MWSBE) Program as part of the Buy Local strategy. Much of the information that RBS-PPCP is collecting as part of the City of Newark's 2020 project is applicable to the City of Jersey City's study. We will be able to use applicable information from the Newark study as part of the Jersey City study, which will result in both cost and time savings. In addition, our research team and subconsultants for the City of Jersey City disparity study (Rutgers, Jersey City University and Jersey City Community College)—are all located in close proximity to Jersey, New Jersey. RBS-PPCP's proposed project team will provide substantial value to the City by providing program recommendations that are consistent with state regulations as well as the local business climate.

City expertise. Dr. Lyons has extensive experience participating in disparity studies for different organizations across the country (and in the UK) and helping them implement minority, woman, veteran,



LGBT-owned business programs. As part of that experience, RBS-PPCP has conducted and participated in disparity research and studies for numerous cities including the City of Newark (in progress), the State of New Jersey, Essex County, NJ (both as a participant only), National Diversity organizations (NY/NJ, Houston, TX) and as the Chief Procurement Officer and Executive Director of Procurement at Rutgers, The State University of New Jersey. As a result of that experience, and our extensive interaction with the NJ State Department of Community Affairs (oversight of public procurement policies and procedures), we have a comprehensive understanding of how cities award contracts; how their contracting differs from that of other types of organizations; and the measures that cities use to encourage the participation of minority, woman, veteran, LGBT-owned businesses. Moreover, we understand the efforts that cities must make to ensure that their implementations of minority, woman, veteran, LGBT-owned businesses programs can meet the *strict scrutiny* standard of constitutional review (including the narrow tailoring requirement).

F – Project Organization

Project Team

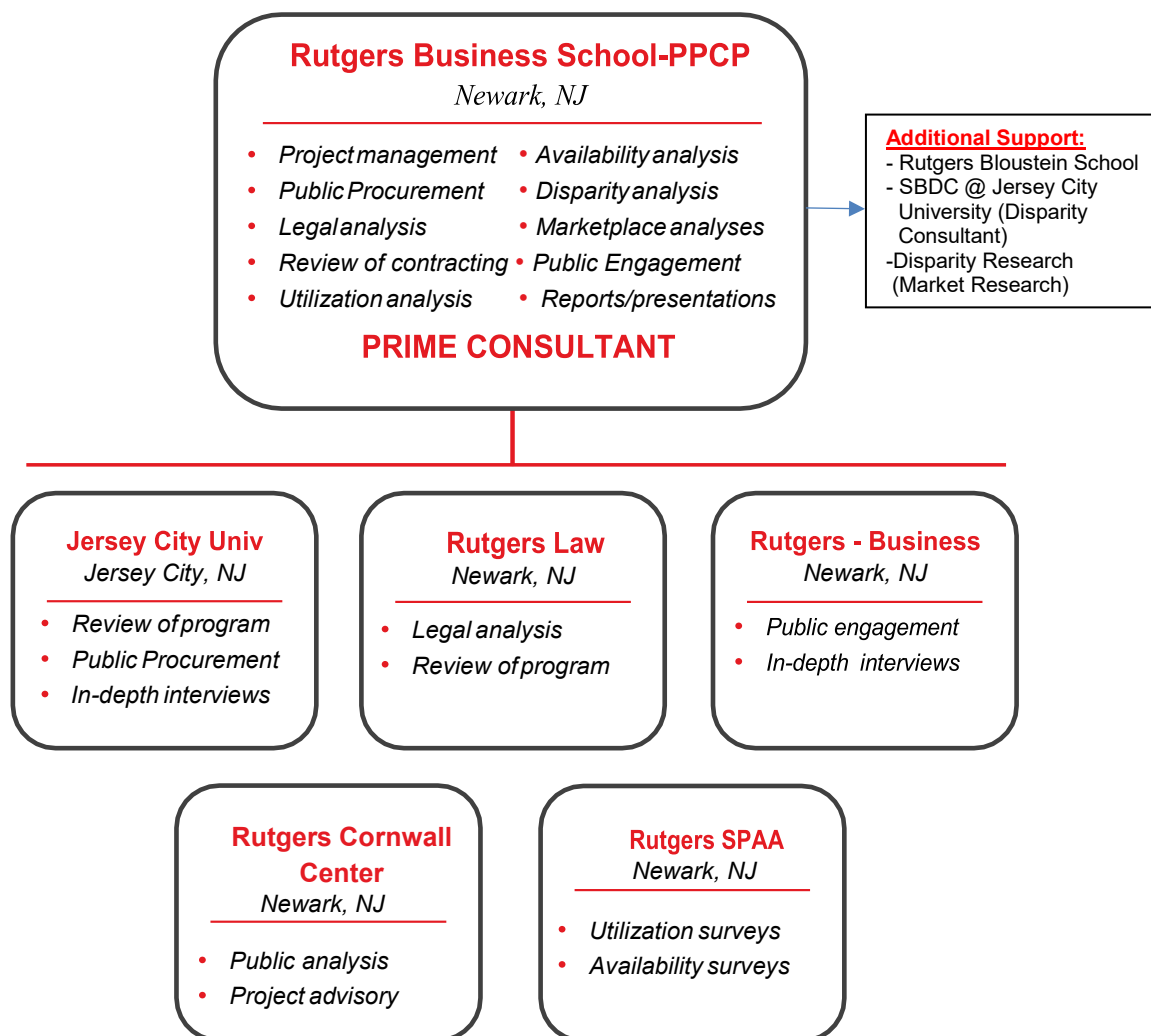
The RBS-PPCP project team for the City’s disparity study includes RBS-PPCP (and additional Rutgers researchers and experts) and two subconsultants (Rutgers Subcontracts), all of whom possess expertise directly relevant to conducting the study in a manner that meets the highest industry and legal standards. We have been identifying and recruiting our project team for several months (since our initial meeting in January 2018) in anticipation of the City releasing its Request for Proposals for the disparity study. In addition to the Rutgers team members, we carefully selected each subconsultant on the team so that the Project Team can collectively meet the following objectives:

- To utilize all aspects of our collective expertise in conducting quantitative and qualitative disparity research and studies, our historical procurement and contract work with minority, woman, veteran, LGBT-owned business programs, our public private community engagement project work, to deliver a project that is in compliance with relevant case law and regulations;
- To understand that the project team must include a strong, local presence with meaningful participation from minority, woman, veteran, LGBT-owned businesses that are familiar with contracting work and potential barriers that businesses face in the Jersey City region; and
- Project team must have the capacity to dedicate themselves to conducting the 2019 City of Jersey City Disparity Study successfully, efficiently, and in a manner that meets the highest research and legal standards.

RBS-PPCP reached out to our disparity study partners as well as local contacts to assemble a team that meets all the above objectives. We selected our final project team after hours of planning and vetting to ensure that we can deliver a disparity study that helps the City implement program measures effectively and in a legally-defensible manner. Figure 1 presents an organizational chart of the RBS-PPCP project team including the primary responsibilities on the disparity study.



Figure 1
Organizational Chart of RBS-PPCP project team



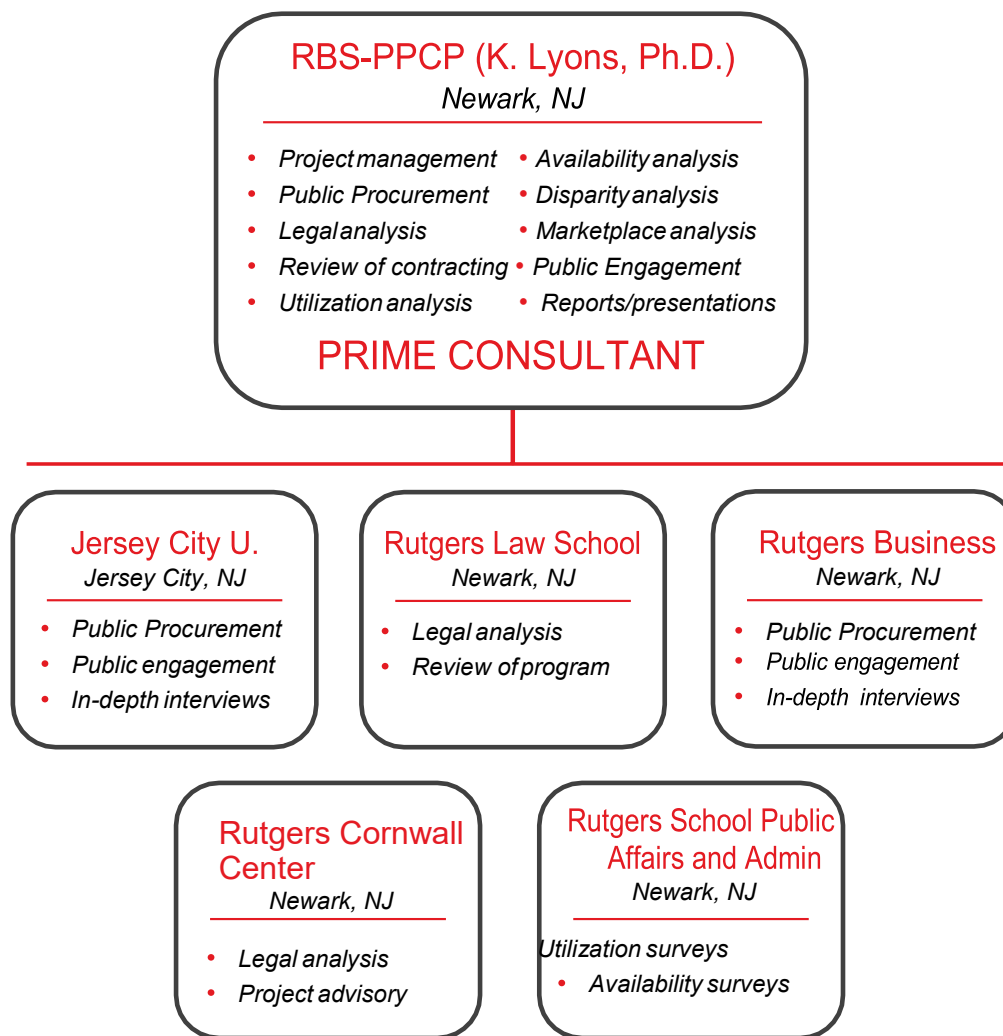
Rutgers Business School (RBS)-Public Private Community Partnerships (PPCP).

RBS-PPCP will serve as prime consultant for the 2019 City of Jersey City Disparity Study and will be responsible for ensuring that all study tasks are completed on time and accurately. RBS-PPCP's resources possess expertise in data management and analysis; qualitative data collection; and reporting and presentations. Key personnel assigned to the 2019 City of Jersey City Disparity Study will be confirmed prior to the commencement of the project but we have identified their roles and efforts in the budget. As needed, RBS-PPCP will also rely on additional staff members to complete disparity study tasks (if needed). Dr. Kevin Lyons, RBS-PPCP Director, and Ms. Magda Comeau, RBS-PPCP, Senior Program Coordinator—who will serve as RBS-PPCP's Project Manager and Assistant Project Manager, respectively—have each been with Rutgers for more than 30 years (K. Lyons) and 15 years (M. Comeau).



Subconsultant. One subconsultant (defined as a Rutgers Sub-Contract)—Jersey City University—have worked with Rutgers University on numerous research projects over the past 20+ years. We provide brief descriptions of each subconsultant below. We also provide brief descriptions about subconsultant’s qualifications for the disparity study.

Figure 2
Project Team Staffing Structure



Key Personnel Qualifications

RBS-PPCP will provide the names and bios for key personnel prior to the commencement of the contract.



G – Project Workplan

RBS-PPCP proposes to conduct a comprehensive disparity study to provide the City of Jersey City (the City) with information that will help it refine its implementation of the minority, woman, veteran, LGBT-owned businesses supplier diversity program. The disparity study will help the City implement the program in a manner that reflects current marketplace conditions and is consistent with relevant legal standards. As part of the study, RBS-PPCP will provide information about:

- The participation of minority, woman, veteran, LGBT-owned businesses in City contracts and procurements;
- The availability of minority, woman, veteran, LGBT-owned businesses in Jersey City that are ready, willing, and able to perform on City contracts;
- Any disparities that exist between the participation and availability of minority, woman, veteran, LGBT-owned businesses for City contracts;
- Any barriers that may be adversely affecting the participation of minority- and woman-owned businesses in City contracts;
- Any race- or gender-based discrimination that exists in the local marketplace that impacts the participation of minority- or woman-owned businesses in City contracts;
- Recommendations regarding programmatic remedies to address any barriers that minority, woman, veteran, LGBT-owned businesses face with respect to City contracting; and
- Revisions necessary to address relevant legal requirements and case law.

The disparity study will help the City implement the MWBE Program in a manner that is legally- defensible under current legal standards including the *strict scrutiny* standard of constitutional review. Under the strict scrutiny standard, a government organization must have a compelling governmental interest in remedying past identified discrimination. A government organization must further show that any program that it adopts is *narrowly tailored* to achieve the goal of remedying the identified discrimination. The disparity study will include information that the City can use to address the strict scrutiny standard in addition to other federal, state, and city law.

The crux of the disparity study will be to examine potential disparities between the participation of minority, woman, veteran, LGBT-owned businesses in City contracts and their availability for that work. The study will focus on construction; professional services (architecture and engineering); and goods and services contracts and procurements that the City awarded during a ____-year study period (July 1, 20__ through June 30, 20__). To obtain the above information and complete the disparity study in a legally-defensible manner, RBS-PPCP proposes 12 major project tasks. RBS-PPCP's proposed project plan addresses all requirements presented in the Request for Proposal (RFP). Our methodology will be conducted in accordance with projects approved by the United States District Court of the Eastern District of California, the Ninth Circuit Court of Appeals, the United States Department of Transportation(USDOT), the United



States Department of Justice (USDOJ), the United States Congress, and other relevant authorities.^{1 2}

H – Key Dates and Deliverables (Tasks)

We provided detailed information about each of the 12 major project tasks below (includes Assumptions and Risks).

Task 1 – Project management. Effective communication and responsive project management will be essential to completing the disparity study successfully and efficiently. RBS-PPCP proposes close collaboration with the City throughout the study through regular project meetings and monthly status updates. Task 1 lays the foundation for effective communication between the project team and the City.

Project meetings. RBS-PPCP will participate in numerous in-person and telephone meetings during the course of the disparity study. RBS-PPCP will work with the City to schedule and coordinate all project meetings and maintain a centralized web-based shared documentation site.

Project initiation meeting. Based on direction from the City, the project team will coordinate and participate in an in-person project initiation meeting to begin the study. Key RBS-PPCP project team members will meet with City management, council, City project committee and staff to:

- Establish effective and responsive channels of communication;
- Refine our work plan and study schedule (as necessary);
- Discuss research questions;
- Discuss data requests; and
- Address other study topics.

Regular project meetings. Key RBS-PPCP project team members will participate in at least two additional project meetings per month with the City via conference call. RBS-PPCP also recommends holding additional in-person project meetings at key junctures of the disparity study including when we submit draft and final disparity study reports.

Monthly progress reports. RBS-PPCP will prepare and deliver monthly progress reports describing the progress that the project team made toward completing the study in the previous month. The reports will identify any challenges that the project team encountered that will affect the project schedule or the successful completion of subsequent project tasks as well as how the project team resolved those challenges.

¹AGC, *San Diego Chapter, Inc. v. California DOT*, 2013 WL 1607239 (9th Cir. April 16, 2013).

²Brief for the United States as Amicus Curiae Supporting Appellees (California DOT) (filed 2/9/12), at pages 15, 23, 24, fn 8, 26, 27, 28, in the appeal of *Associated General Contractors of America, San Diego Chapter, Inc. v. California DOT*, Appeal No. 11-16228, United States Court of Appeals for the Ninth Circuit.



RBS-PPCP will deliver monthly progress reports and invoices by the 10th business day of each month.

Responsible staff. Dr. Kevin Lyons, RBS-PPCP Project Manager, and Ms. Magda Comeau, RBS-PPCP Assistant Project Manager, will be responsible for coordinating and facilitating all project meetings. They will also be responsible for delivering monthly progress reports to the City. As needed, subconsultants will be responsible for participating in project meetings during various junctures of the study. For example, the Rutgers Law School, and Rutgers SPAA, will participate in project meetings related to the legal analysis and framework.

Task 2 – Community engagement (if requested by the City). RBS-PPCP proposes an extensive community engagement plan as part of the disparity study. Our community engagement plan for the City will build on relationships that we have developed with Jersey City. The project team’s community engagement plan will be carefully designed to meet the following key objectives:

- *Inform* the City (and its Study Committee) and local community about study progress and key study activities;
- *Engage* the City (and its Study Committee) and local community with the disparity study in meaningful ways;
- Engender *support* from the Study Committee and the local community for the study and the project team’s approach; and
- *Listen* to insights and anecdotes that the local business community shares about doing business in Jersey City.

The community engagement plan will consist of two types of outreach efforts: informational efforts and engagement efforts.

Informational efforts. The community engagement plan will consist of several efforts that are designed to provide information about the study and to ensure that business owners, key stakeholders, and other members of the public are aware of opportunities to participate in the study as appropriate.

Web page and e-mail address. Throughout the course of the study, the project team will work with the City to post disparity study status updates and progress information on a separate page of the City’s website (TBD). The project team will be responsible for developing content for the status updates, and the City will be responsible for posting that information. The web page will provide information about disparity study methodology, study progress, and the project schedule including key upcoming meetings and events. The project team will provide content for status updates at key junctures during the course of the study including project initiation and prior to conducting utilization and availability telephone surveys.

In addition, RBS-PPCP will establish an e-mail address dedicated to the disparity study. The local business community will be able to contact the project team directly using the e-mail address to ask questions or to submit comments related to the study. Any comments that the community submits will be integrated, as appropriate, into the project team’s qualitative analysis of anecdotal information. RBS-PPCP will be responsible for managing the e-mail address and checking it regularly for community input.

Public notices and media ads. The project team will work with the City to draft public notices regarding key



disparity study tasks, particularly to encourage the participation of local business owners and other key stakeholders in certain tasks (e.g., availability survey process, utilization survey process, and public meetings). RBS-PPCP will submit all public notices to the City for review, and upon receiving approval, will finalize them and rely on the City to disseminate the notices via e-blasts, newspaper ads, trade publications, local organizations, and the web.

Engagement efforts. RBS-PPCP's community engagement plan will also consist of several efforts that are designed to provide the community with opportunities to actively engage with the project team and contribute to disparity study results and recommendations.

City Council and public meetings. Near the beginning of the study, RBS-PPCP will facilitate two public meetings in Jersey City in conjunction with existing City Council meetings (TBD). RBS-PPCP will work with the City to determine which City Council meetings or other meeting times and locations will be most appropriate. During the meetings, RBS-PPCP will provide information about the project team, the purpose of the study, the project approach, and how the community can participate directly in the study. We will also answer any questions that meeting participants have about the study. In addition, at the end of each meeting, the project team will give attendees an opportunity to share their perceptions and experiences about doing business in the local marketplace and working with the City. Meeting participants will have the opportunity to share their experiences by providing either verbal or written testimony directly to the project team. Testimony from the meetings will be integrated, as appropriate, into the project team's qualitative analysis of anecdotal information. RBS-PPCP will work with the City to secure meeting locations, advertise the public meetings, and coordinate transcription services for the meetings.

In-depth interviews. RBS-PPCP will conduct one-on-one, in-person, in-depth interviews to collect nuanced information about business' experiences doing work in the local marketplace and working with the City. Information from those interviews will help the project team identify any potential barriers related to working with the City and will inform the project team's recommendations for improving contracting processes and program measures. The project team will conduct 20 in-depth interviews with business owners throughout Jersey City to discuss their experiences working in the local marketplace; trying to obtain work with government agencies like the City; and starting and growing their businesses. The project team will interview a mix of businesses that have participated in City contracting in the past and businesses potentially available for City contracts that may not have been successful in obtaining that work. The project team will conduct interviews with minority, woman, veteran, LGBT-owned businesses as well as with businesses owned by non-Hispanic white men.

Utilization and availability surveys. RBS-PPCP will conduct telephone surveys with local businesses that are potentially available for City work or that participated on City contracts during the study period. As part of those surveys, the project team will collect information about each business' characteristics, which will allow RBS-PPCP to accurately measure the participation and availability of minority, woman, veteran, LGBT-owned businesses for City contracts. The surveys will also provide an opportunity for participants to share information about their experiences about doing business in the local marketplace and working with the City. Utilization and availability surveys are described in detail in Tasks 5 and 6, respectively.

Responsible staff. Dr. Kevin Lyons, RBS-PPCP Project Manager, and Ms. Magda Comeau, RBS-PPCP Assistant Project Manager, will be responsible for facilitating all public meetings; providing content for web



updates; drafting public notices; and establishing and maintaining the dedicated email address. RBS-PPCP, RBS, Rutgers SPAA, and NJCU will be responsible for conducting all in-depth interviews. RBS will also help coordinate and facilitate the public meetings and other community engagement efforts. RBS-PPCP will be responsible for conducting the utilization and availability surveys.

Task 3—Legal analysis and framework. The City has requested that the project team conduct a legal analysis related to case law as well as federal and local regulations relevant to the implementation of minority, woman, veteran, LGBT-owned business programs and disparity studies. The RBS-PPCP project team has a deep understanding of case law and legal guidance related to minority, woman, veteran, LGBT-owned business programs as well as disparity studies. RBS-PPCP and The Rutgers Law School will develop a Legal Analysis and Framework that will include any recent developments in relevant federal regulations, case law, state law, statutes, and other information. The Legal Analysis and Framework will guide the project team's methodology for the disparity study to ensure that the study is consistent with current legal standards and federal, state, and local regulations. The analysis will include detailed information about key cases and their impact on the City including the following examples:

- *Standards of Review for Race-Specific and Gender-Specific Programs*
- *To Withstand Strict Scrutiny an MBE Program Must Be Based on a Compelling Governmental Interest such as Remedying Discrimination*
- *Evidence of Significant Statistical Disparities Between Minorities Utilized and Qualified Minorities Available May Satisfy Strict Scrutiny and Justify a Narrowly Tailored M/WBE Program*
- *Anecdotal Evidence of the Experiences of Non-MBE, Minority, and Woman-Owned Firms May Be Used to Justify an M/WBE Program*
- *The Governmental Entity or Agency Enacting an MBE Program Must Be Shown to Have Actively or Passively Perpetuated the Discrimination*
- *To Withstand Strict Scrutiny, an MBE Program Must Be Narrowly Tailored to Remedy Identified Discrimination*
- *City of Richmond v. Croson*;
- *Adarand Constructors, Inc. v. Peña*;
- *Western States Paving Company v. Washington State DOT*;
- *Rothe Development Corp. v. U.S. Department of Defense*;
- *AGC, San Diego v. California Department of Transportation et al.* (a case in which RBS-PPCP and The Rutgers Law School were involved);
- *Dunnet Bay Construction Company v. Illinois DOT, et al.*; and
- *Midwest Fence Corporation v. Illinois DOT et al.*

Development of legal background. The Rutgers Law School will provide a legal history of challenges to state, local, and federal small business and minority, woman, veteran, LGBT-owned business programs. The Law School will also summarize legal issues specific to New Jersey and the NJ Circuit, providing an assessment



of the statutory framework applicable to the City. That information will form a basis for evaluating the City's implementation of the MWBE Program as well as any proposed program developments. It will also provide a broader legal context for RBS-PPCP's disparity study methodology.

Analysis and reporting. The Rutgers Law School will monitor legal developments and update the legal analysis through the end of the project. The Legal Analysis and Framework will result in a chapter as well as a supporting appendix of the disparity study report.

Responsible staff. The Rutgers Law School and the Rutgers School for Public Affairs and Administration will be responsible for developing the legal analysis and framework and for drafting the supporting appendix. Dr. Kevin Lyons, RBS-PPCP Project Manager, Ms. Magda Comeau, RBS-PPCP Assistant Project Manager, and Rutgers SPAA and Rutgers Law School, will be responsible for integrating legal framework and relevant case law into the final disparity study report.

Task 4 – Review of contracting procedures and program measures. The City has requested that the project team make detailed recommendations for programmatic changes and, if appropriate, enhancements related to the MWBE Program. A thorough understanding of the City's contracting procedures and policies and of the agency's current implementation of the MWBE Program will be essential to subsequent analyses and recommendations. The project team will research and document the policies and procedures that the City uses as part of its contracting processes. In addition, we will complete a thorough review of the agency's existing implementation of the MWBE Program and the effectiveness of the program's measures in encouraging the participation of minority, woman, veteran, LGBT-owned businesses in City contracting.

The project team will also review successful efforts that other local government agencies have used to encourage the participation and increase the capacity of minority, woman, veteran, LGBT-owned businesses.

Based on that review, RBS-PPCP will assess the City's current program measures and make recommendations related to measures that the City could consider using in the future to increase the participation of minority, woman, veteran, LGBT-owned businesses and address legal requirements. Information from Task 4 will help RBS-PPCP:

- Assess the impact that certain policies, procedures, and program measures have on the participation of minority, woman, veteran, LGBT-owned businesses in Jersey City's contracting;
- Assess the impact that the City's contracting programs have on the availability of minority, woman, veteran, LGBT-owned businesses;
- Recommend program enhancements and measures for the City to consider (e.g., race- and gender-neutral program measures; race- and gender-conscious program measures; and staffing resources); and
- Identify revisions necessary to the MWBE Program to address relevant legal requirements and case law.

Responsible staff. Dr. Kevin Lyons, RBS-PPCP Project Manager, Ms. Magda Comeau, RBS-PPCP Assistant



Project Manager, Rutgers SPAA, and NJCU will be responsible for reviewing the City's current program measures and contracting procedures. The Rutgers Law School will be responsible for providing legal support and guidance related to the City's program and procedures.

Task 5 – Utilization analysis. RBS-PPCP's utilization analysis will produce accurate estimates of the percentage of prime contract and subcontract dollars that went to minority, woman, veteran, LGBT-owned businesses on construction; professional services (architecture and engineering); and goods and services contracts that the City and its various departments awarded during the study period. The project team will use data from the utilization analysis as inputs in the disparity analysis to assess whether minority, woman, veteran, LGBT-owned businesses were underutilized during the study period relative to their availability for City contracts (for details, see our description of Task 7). The utilization analysis will also provide information about the City's relevant product markets and relevant geographic market area.

Data assessment. RBS-PPCP will begin the utilization analysis with a comprehensive assessment of contract and vendor data that the City maintains in all procurement categories (e.g. the areas of construction; professional services (architecture and engineering); and goods and services). That assessment will include meetings with the City to gain a thorough understanding of its contract and vendor data including discussions about:

- The types of contracts on which the City maintains data;
- The formats in which the City maintains data;
- The degree to which relevant City departments maintain subcontractor data;
- Effective ways for RBS-PPCP to make data requests and to receive data; and
- Timelines for contract and vendor data collection.

The project team will work closely with the City to develop an effective plan for organizing and requesting all necessary data for the utilization analysis including relevant information from various City departments. Following the data review, RBS-PPCP will submit a detailed, written data request that will specify the data that the project team will require for its analyses. If any required data are unavailable, the project team will be responsible for collecting that information in a manner that ensures the integrity and accuracy of our analyses (e.g., engaging in comprehensive subcontract data collection).

Data collection. The project team will use electronic contract data from City data systems such as (the Jersey City Data System TBA) and, as necessary, hardcopy contract data from the City to compile information about relevant contracts that the agency awarded during the study period and about the vendors that participated in those contracts. RBS-PPCP has substantial experience extracting and manipulating data from (the Jersey City Data System TBA), because most municipalities in the U.S. use similar systems to maintain much of their contracting and vendor data. That experience will ensure that RBS-PPCP will collect data from the City efficiently and accurately.

Contract data. Based on contract data that we collect from the City; the project team will develop a



utilization database that includes the following information about each relevant contract that the City awarded during the study period:

- Contract name and identification number;
- Contract award date;
- Contractor, consultant, or supplier name;
- Award amount of the contract and corresponding change order information;
- Paid-to-date amount (if available); and
- Description of the type of work or supplies involved in the contract (if available).

RBS-PPCP will request the above information for prime contracts. If possible, RBS-PPCP will also request any available data for specific task orders under broader contracts (e.g., on certain professional services contracts). The project team will also collect the above information, as available, for first-tier subcontracts and supplier agreements. RBS-PPCP understands there may be gaps in the City's subcontractor and supplier data that are relevant to the disparity study. In those instances, the project team will work with the City to contact prime contractors that worked on City contracts during the study period to collect information about their associated subcontracts. We will prepare all materials required to complete the subcontract data collection effort including a letter of introduction, instructions on how prime contractors can submit requested information, and data collection forms. We will then work with the City to mail or e-mail that information to prime contractors. The project team will be responsible for compiling information that prime contractors submit in response to our data requests. We have successfully completed similar data collection efforts on several previous supplier studies.

Vendor data. RBS-PPCP will also compile vendor data on businesses that participated in City prime contracts and subcontracts during the study period. The project team will collect full addresses, phone numbers, and other identifying information for prime contractors and subcontractors that participated in City contracts from data that the agency maintains and from other data sources such as local certification databases and prime contractor outreach for which RBS-PPCP will be responsible.

Relevant contract categories. RBS-PPCP will use contracting and vendor data to determine the commodities and services categories in which the City typically awarded contracts during the study period. The relevant commodities and services categories that the project team identifies will account for at least 75 percent of the contracting dollars that the City spent during the study period. The relevant commodities and services markets will be based on National Institute of Governmental Purchasing (NIGP) or similar codes (e.g. NAICS, UNSPC, etc.). RBS-PPCP will provide detailed descriptions of how we determined the relevant commodities and services categories in the draft and final disparity study reports as well as the dollar amounts that the City spent in each category.

Relevant geographic market area. Following City guidance, RBS-PPCP can consider the Jersey City Metro Area and the Western New Jersey Regional area as part of the relevant geographic market area (TBD). As necessary, RBS-PPCP will work with the City to refine the geographic market area and will identify whether any other market areas are relevant to City contracting. RBS-PPCP will also use contracting and vendor data



to determine the relevant geographic market area in which the City spends most of its relevant contracting dollars based on information about the locations of the contractors that participated in City contracts during the study period. The relevant geographic area that the project team identifies will account for at least 75 percent of the relevant contracting dollars that the City spent during the study period. RBS-PPCP will provide detailed descriptions of how we determined the relevant geographic market area in the draft and final disparity study reports.

Utilization telephone surveys. After collecting City contract and vendor data, determining the relevant contract categories, and refining the relevant geographic market area, the project team will conduct utilization telephone surveys with businesses that participated in City contracts during the study period to establish key business characteristics including their primary lines of work and the race/ethnicity and gender of their owners. The project team will contact businesses for telephone surveys up to five times on different days and at different times of the day. That approach is designed to minimize non-response and help ensure that the utilization analysis is as accurate as possible. Information from the utilization surveys will augment City data on prime contractors and subcontractors, enabling a more accurate assessment of the participation of minority, woman, veteran, LGBT-owned businesses in City contracting.

As part of the 2019 New Jersey Economic Development Authority (NJ EDA) – Policy Academy on Strengthening New Jersey Manufacturing, State of New Jersey Supply Chain Analysis project, RBS-PPCP is conducting utilization telephone surveys with thousands of New Jersey businesses. If any of those businesses participated in the City of Jersey City contracts during the study period, we will use information from the NJ EDA Supply Chain project surveys for the utilization analysis rather than conducting new interviews. Doing so will result in time savings without compromising the integrity of the research.

Utilization analysis. After completing utilization telephone surveys, RBS-PPCP will begin the utilization analysis. The project team will code type of work, size of work, and other characteristics for each relevant prime contract and subcontract. We will then examine the participation of minority, woman, veteran, LGBT-owned businesses, including certified businesses, as a percentage of dollars that the City awarded to all businesses during the study period. The project team will assess participation for all minority and woman-owned, veteran and LGBT businesses considered together and separately for each relevant racial/ethnic and gender group—Asian Pacific American-, Black American-, Hispanic American-, Native American-, Subcontinent Asian American-, and non-Hispanic white woman-owned businesses.

Analysis and reporting. The project team will use results from the utilization analysis to prepare estimates of the participation of minority, woman, veteran, LGBT-owned businesses on City contracts. At a minimum, RBS-PPCP will analyze and report results separately for:

- Different racial/ethnic and gender groups;
- Minority, woman, veteran, LGBT-owned businesses that are and are not certified;
- Construction; professional services (architecture and engineering); and goods and services;
- Prime contracts and subcontracts;
- Different study period years; and



- Different contract sizes.

The utilization analysis will be summarized in a chapter of the disparity study report with a supporting appendix that will discuss the methodology that the project team used including the types of contracts that the project team analyzed and the data sources on which the project team relied.

Responsible staff. Dr. Kevin Lyons, RBS-PPCP Project Manager, and Ms. Magda Comeau, RBS-PPCP Assistant Project Manager, Rutgers SPAA and NJCU will be responsible for collecting City contract and vendor data; determining the relevant contract categories; and refining the relevant geographic market area. Our RBS-PPCP Senior Data Analyst, and RBS-PPCP Data Analyst, will assist with each of those tasks. RBS, Rutgers SPAA and NJCU Students will be deployed (under Rutgers/NJCU direction) to conduct the utilization telephone surveys under close supervision from RBS-PPCP, Rutgers SPAA and NJCU.

Task 6 – Availability analysis. RBS-PPCP’s availability analysis will yield estimates of the availability of minority, woman, veteran, LGBT-owned businesses that are ready, willing, and able to perform work on City contracts. RBS-PPCP will use a *custom census* approach to conduct the availability analysis that will require primary data collection from businesses performing relevant types of work within Jersey City. The methodology that RBS-PPCP will use to complete the availability analysis has been strongly approved by the United States District Court of the Eastern District of California, the Ninth Circuit Court of Appeals, USDOT, USDOJ, the United States Congress, and other relevant authorities. The project team will also use availability information to develop benchmarks against which to compare participation in the disparity analysis (for details, see our description of Task 7). RBS-PPCP will provide availability estimates separately for the different racial/ethnic and gender groups and for the different contract types that will be included as part of the study.

Availability surveys. RBS-PPCP will create a representative database of businesses ready, willing, and able to work on City contracts. RBS-PPCP will begin the process by compiling a “phone book database” of businesses that work in relevant industries and that are also located in Jersey City. RBS-PPCP will develop that database based on information from a variety of data sources that provide *comprehensive and unbiased* listings of all types of relevant businesses— that is, not only those businesses that are minority- or woman-owned—throughout the Jersey City marketplace (e.g., bidders lists; vendor registration lists; and other business listing databases and directories). The project team will then attempt to contact all of those businesses via telephone to complete *availability surveys* with their owners or managers. We will attempt to contact all businesses up to five times on different days and at different times of the day during business hours. That approach is designed to minimize non-response in the survey and help ensure that the resulting survey data are representative, unbiased, and accurate. Conducting comprehensive availability surveys in that way is the *only* way to collect the information necessary to ensure an accurate and valid availability analysis that meets the highest research and legal standards.

The objective of the availability survey is not to collect information from each and every relevant business that is operating in the local marketplace. It is to collect information from a representative and unbiased subset of the business population, so that the project team can estimate the availability of minority, woman, veteran, LGBT-owned businesses in an accurate statistically- valid manner. Our methodology builds on hundreds of years of survey research and sampling theory. It is the basis for all large-scale



surveys that researchers conduct including the decennial population census that the United States Census Bureau conducts.

RBS-PPCP will customize the availability analysis to the contracts that the City awarded during the study period resulting in rigorous and accurate availability estimates. As part of the availability analysis, RBS-PPCP will have attempted to contact *all* potentially available businesses—not just a sample of them—for the availability surveys. Our approach goes further than that of any other disparity study researcher to ensure that the resulting availability estimates are representative, unbiased, and accurate. The availability surveys will assess various topics including:

- Qualifications and interest in work for the City;
- Work as a prime contractor, subcontractor, or supplier;
- Primary line of work (based on industry codes);
- *Relative capacity*, as measured by the largest contract or subcontract bid on or performed within the recent past;
- Year of business establishment;
- Race/ethnicity and gender of ownership;
- Number of employees; and
- Gross revenue.

As part of the 2019 NJ EDA Supply Chain Study, RBS-PPCP is attempting availability surveys with hundreds of New Jersey businesses. As appropriate, the project team will integrate data about relevant businesses from those surveys into the availability analysis for the City of Jersey City. Doing so will result in time savings without compromising the integrity of the research.

Availability database. Information from completed availability surveys will form the core of an availability database that RBS-PPCP will use to identify businesses that are potentially available to participate in City contracts as well as the proportion of those businesses that are minority, woman, veteran, LGBT-owned businesses. The database will list various pieces of information about each potentially available business including:

- Business name;
- Contact information;
- Race/ethnicity and gender of ownership;
- Primary line of work (based on industry codes);
- Year of business establishment; and
- Relative capacity.



To confirm or supplement information that the project team collects as part of availability surveys, we will also draw on vendor information that the City maintains; trade organization data; certification data; and other data sources.

Calculating availability. Rather than calculating availability based on a simple head count of minority, woman, veteran, LGBT-owned businesses, RBS-PPCP will determine availability on a contract by contract basis. The project team will use a bottom-up *matching* approach to determine availability for City prime contracts and subcontracts based on information from the availability database and on information from contract data:

1. For each contract element (i.e., prime contract or subcontract), RBS-PPCP will identify the type of work, contract role, and size of work based on contract data.
2. RBS-PPCP will identify businesses in the availability database that report being qualified and interested in performing that specific type of work for the City; in that particular contract role; and having bid on or performed work of that size (to take relative capacity into account).
3. RBS-PPCP will determine the number of minority, woman, veteran, LGBT-owned businesses among all businesses available for that particular contract element (e.g., three non-Hispanic white woman-owned businesses, one Black American-owned business, one Subcontinent Asian American-owned business, three Hispanic American-owned businesses, and one Native American-owned business out of 20 total businesses available to perform that contract element).
4. The project team will then translate the numeric availability for a contract element into percentage availability for the contract element (continuing the example above, 15 percent for non-Hispanic white woman-owned businesses, 5 percent for Black American-owned businesses, and soon).
5. RBS-PPCP will then multiply the percentage availability by the dollars associated with the contract element, add results across all contract elements, and divide by total dollars for all contract elements to produce a dollar-weighted estimate of overall availability of minority, woman, veteran, LGBT-owned businesses.

The resulting availability estimates will establish benchmarks in the disparity analysis to which the project team can compare the actual share of dollars going to each racial/ethnic and gender group.

Relative capacity. Recent key court decisions have found the relative capacity of businesses to actually perform on an agency's contracts to be an important factor in measuring availability (e.g., *Western States Paving Company v. Washington State DOT*, *Rothe Development Corp. v. U.S. Department of Defense*, *Engineering Contractors Association of S. Fla. Inc. v. Metro Dade County*, and *AGC, San Diego v. California Department of Transportation et al.*). Consistent with those and other court decisions, RBS-PPCP will account for the relative capacity of businesses when measuring availability (see step 2 of *Calculating availability* above). The United States District Court of the Eastern District of California and the Ninth Circuit Court of Appeals in *Associated General Contractors of America, San Diego Chapter v. California Department of Transportation et al.* found the analysis of availability to be much more comprehensive than analyses that had previously failed. RBS-PPCP's approach to measuring availability will also be in accordance with the approved methods by USDOT and USDOJ in their *amicus curiae* brief related to the



AGC v. Caltrans case. USDOT and USDOJ specifically cited the fact that this process “[took] into account factors that may affect the relative capacity of DBEs to undertake contracting work” in stating their approval.

But for analysis. The *but for analysis* will assess the availability of minority, woman, veteran, LGBT-owned businesses absent the effects of past discrimination. RBS-PPCP will use regression analyses to examine whether the availability of minority, woman, veteran, LGBT-owned businesses in the local contracting industry would be different but for any race- or gender-based discrimination. The analysis will rely on regression analyses to determine whether the availability of minority- and woman-owned businesses would change if minorities and women owned businesses at the same rate as non-Hispanic white men after statistically controlling for race-and gender-neutral factors.

Analysis and reporting. The project team will use results from the availability analysis to prepare overall availability estimates of minority, woman, veteran, LGBT-owned businesses for City contracts. The project team will also prepare availability estimates based on various business characteristics and on different sets of contracts. At a minimum, we will report availability estimates separately for:

- Different racial/ethnic and gender groups;
- Construction; professional services (architectural and engineering); and goods and services contracts;
- Prime contracts and subcontracts;
- Different study period years; and
- Different contract sizes.

The availability analysis will be summarized in a chapter of the disparity study reports with appendices that will include discussions of the methodology that RBS-PPCP used.

Responsible staff. RBS Data Analyst Ph.D./Graduate Students will be responsible for maintaining the availability database. RBS and NJCU will be responsible for conducting the availability telephone surveys under close supervision from Dr. Kevin Lyons, RBS-PPCP Project Manager, and Ms. Magda Comeau, RBS-PPCP Assistant Project Manager will also be responsible for calculating availability and reporting availability results to the City.

Task 7 – Disparity analysis. The City has requested that the project team analyze participation and availability data to determine if disparities continue to exist in Jersey City. RBS-PPCP will use sophisticated quantitative techniques to compare the participation of minority, woman, veteran, LGBT-owned businesses in contracts that the City awarded during the study period to the dollars that those businesses would be expected to receive based on their availability for specific types and sizes of contracts in all categories including construction; professional services (architecture and engineering); and goods and services contracts. For each racial/ethnic and gender group, the disparity analysis will examine the absolute and relative difference between participation and availability. RBS-PPCP will also analyze the statistical significance of any identified disparities using appropriate statistical techniques.

RBS-PPCP will calculate overall disparity indices for all minority, woman, veteran, LGBT-owned businesses considered together as well as separate disparity indices based on various business



characteristics and on different sets of contracts. At a minimum, we will compute and report disparity indices separately for:

- Different racial/ethnic and gender groups;
- Construction; professional services (architecture and engineering); and goods and services contracts;
- Prime contracts and subcontracts;
- Different study period years; and
- Different contract sizes.

The disparity analysis will be summarized in a section of the disparity study report including a detailed discussion of the methodology that RBS-PPCP used.

Responsible staff. Dr. Kevin Lyons, RBS-PPCP Project Manager, and Ms. Magda Comeau, RBS-PPCP Assistant Project Manager, and Rutgers SPAA will be responsible for conducting the disparity analysis and reporting those results to the City.

Task 8 – Explanations for any observed disparities. The disparity study will include an assessment of possible race- and gender-neutral and race- and gender-based explanations of any disparities in the participation of minority, woman, veteran, LGBT-owned businesses on City contracts and the availability of those businesses for that work. That assessment will include an analysis of the program measures that the City had in place during the study period and that they currently have in place including any current contracting practices that may lead to the underutilization of minority-or woman-owned businesses (for details, see our descriptions of Tasks 4 and 11).

As part of Task 8, RBS-PPCP will also conduct an analysis of past bidding on a representative sample of contracts that the City awarded during the study period based on information from past bid and proposal files. The project team will begin the analysis by drawing a random sample of contracts stratified by various factors such as time period and contract size. Then, RBS-PPCP will examine bid and proposal information from corresponding contracting and proposal files to assess which businesses competed for the work and whether minority, woman, veteran, LGBT-owned businesses fared differently than other businesses in receiving contract awards.

RBS-PPCP will augment information about businesses in the bid analysis with data developed in the utilization and availability analyses. The bid analysis will result in a detailed database that tracks the participation of minority, woman, veteran, LGBT-owned businesses in each step of the contracting process. RBS-PPCP will examine any patterns in:

- How contracts were bid (including bidding process);
- How bidders and proposers were evaluated; and
- The competitiveness of bids and proposals that minority, woman, veteran, LGBT-owned businesses submitted.



RBS-PPCP will summarize explanations for any observed disparities as part of various sections of the disparity study report. The sections will include detailed discussions of the methodology that RBS-PPCP used.

Responsible staff. RBS-PPCP, and RBS-PPCP Data Analyst Graduate Students will be responsible for conducting the bid analysis. Dr. Kevin Lyons, RBS-PPCP Project Manager, and Ms. Magda Comeau, RBS-PPCP Assistant Project Manager, will be responsible for reporting those results to the City.

Task 9 – Quantitative analysis of marketplace conditions. RBS-PPCP will conduct quantitative analyses of current marketplace conditions for minorities, women, and minority- and woman-owned businesses throughout the local construction; professional services (architecture and engineering); and support services. Those analyses will help the City determine whether certain types of discriminatory practices exist within specific industries in Jersey City and will also help determine whether the City is acting as a *passive participant* in any race- or gender-based discrimination that exists in the local marketplace.

Business outcomes. RBS-PPCP will compare business outcomes for minorities, women, and minority, woman, veteran, LGBT-owned businesses to outcomes for non-Hispanic white men and businesses owned by non-Hispanic white men in the areas of:

- **Human capital** to assess whether minorities and women face any barriers related to education, employment, advancement, and gaining managerial experience in relevant industries;
- **Financial capital** to assess whether minorities and women face any barriers related to wages; homeownership; personal wealth; or access to financing, bonding, or insurance;
- **Business ownership** to assess whether minorities and women own businesses at rates that are comparable to that of non-Hispanic white men; and
- **Success of businesses** to assess whether minority, woman, veteran, LGBT-owned businesses have outcomes that are similar to those of businesses owned by non-Hispanic white men.

Those analyses will indicate whether there is evidence that discrimination in Jersey City—either in the public sector or the private sector—has affected the ability of minority, woman, veteran, LGBT-owned businesses to form, grow, and successfully compete for project work including for City contracts. A critical portion of the analysis will rely on regression analyses to examine whether there is statistical information indicating barriers in the local marketplace for minorities, women, and minority, woman, veteran, LGBT-owned businesses while statistically controlling for race- and gender-neutral characteristics.

Relative capacity. RBS-PPCP will use regression analysis and other quantitative models to research whether the relative capacity of minority, woman, veteran, LGBT-owned businesses is constrained compared to that of businesses owned by non-Hispanic white men. That analysis will help determine whether businesses owned by non-Hispanic white men are able to bid on and perform larger projects than minority, woman, veteran, LGBT-owned businesses after statistically controlling for race- and gender-neutral factors.

Over-concentration. RBS-PPCP will use information that we gather from the utilization, availability, and



other analyses to determine whether there is evidence of any over-concentration of minority, woman, veteran, LGBT-owned businesses in specific work types and categories. We will examine specific work areas to determine whether:

- Prime contractors tend to disproportionately use minority, woman, veteran, LGBT-owned businesses that work in a select few industries or subindustries;
- Minority, woman, veteran, LGBT-owned businesses receive a disproportionately large amount of contracting dollars relative to their availability in select industries; and
- Whether the participation of minority, woman, veteran, LGBT-owned businesses serves as a barrier to other businesses attempting to work with the City.

Assessment of information from other studies. As appropriate, the project team will review relevant information developed in recent, publicly-released disparity studies related to the local contracting industries and reconcile them with information from the City’s disparity study (including from the 2006 City of Jersey City Disparity Study, which RBS-PPCP is currently reviewing). As appropriate, RBS-PPCP will also review information from peer-reviewed academic and legal journals.

Data sources. RBS-PPCP will base its quantitative marketplace analyses on:

- Data collected for businesses in the utilization and availability analyses;
- U.S. Census data on employment, advancement, self-employment, and firm revenue;
- Federal Reserve Board’s Survey of Small Business Finances;
- Federal Financial Institutions Examinations Council; and
- Other data sources.

Analysis and reporting. RBS-PPCP will prepare report chapters based on the quantitative marketplace analyses in the disparity study report as well as several detailed report appendices that will include discussions of the methodology that we used.

Responsible staff. RBS-PPCP, and RBS-PPCP Data Analyst Graduate Students will be responsible for conducting the bid analysis. Dr. Kevin Lyons, RBS-PPCP Project Manager, and Ms. Magda Comeau, RBS-PPCP Assistant Project Manager, will be responsible for reporting those results to the City.

Task 10 – Qualitative analysis of anecdotal information. The project team will collect and analyze anecdotal information as part of the disparity study. The project team will collect extensive anecdotal information about potential barriers that minority, woman, veteran, LGBT-owned businesses face in the local contracting industries.

In-depth anecdotal interviews. As part of Task 10, the project team will conduct 20 in-depth anecdotal interviews with business owners, representatives from trade associations, and other stakeholders throughout Jersey City. All interviews will be conducted in person. The project team will interview a mix of businesses that have participated in City contracting in the past and businesses available for City



contracts that may not have been successful in obtaining that work. We will generate a representative sample of businesses and stakeholders of different ownerships and types to provide a broad cross-section of the business community within the local marketplace. The interviews will be conducted with minority, woman, veteran, LGBT-owned businesses as well as with businesses owned by non-Hispanic white men. The one- to two-hour interviews will provide interviewees with the opportunity to discuss various topics related to the local marketplace including:

- Minority, woman, veteran, LGBT-owned business participation;
- Perceptions of certification and certification processes;
- Evidence of race- or gender-based discrimination;
- Promptness of payment;
- Governmental or union practices;
- Perceived barriers to contracting in the public and private sectors;
- Difficulties accessing needed capital, bonding, and insurance;
- Experiences as prime contractors and subcontractors;
- Experiences working with minority, woman, veteran, LGBT-owned businesses and other businesses;
- Evidence of any historical or current race- or gender-based discrimination;
- Effectiveness of race- and gender-neutral program measures to encourage the participation of small businesses including many minority, woman, veteran, LGBT-owned businesses; and
- Other marketplace conditions.

As part of the 2019 NJ State EDA Supply Chain Study, the RBS-PPCP project team is conducting 20 in-depth interviews with New Jersey businesses and trade organizations. As appropriate, RBS-PPCP will use information from those interviews to supplement information that we will collect from in-depth interviews that we conduct as part of the City of Jersey City's disparity study. RBS-PPCP will only use information from the City of Newark study that comes from businesses that work in the City of Jersey City's relevant geographic market area and that work in industries relevant to City of Jersey City contracting.

The resulting information may help to identify prevailing practices in the public and private sectors that could lead to the underutilization of minority, woman, veteran, LGBT-owned businesses and may also help identify the effect of certain program measures in encouraging the participation of small businesses including many minority, woman, veteran, LGBT-owned businesses.

City Council and public meetings. The project team will conduct two public meetings in Jersey City to provide local business owners, trade association representatives, and other knowledgeable individuals the opportunity to share their perceptions and experiences about doing business in the local marketplace and working with the City. We will conduct the public meetings in conjunction with existing City Council meetings. RBS-PPCP will work with the City to determine which City Council meetings or other meeting



times and locations will be most appropriate. Information from the public meetings will be included as part of the project team's anecdotal analysis of marketplace conditions. Testimony from the meetings and any written comments that the project team collects will be analyzed and included, as appropriate, as part of corresponding report appendices. RBS-PPCP will work with the City to secure meeting locations, advertise the public meetings, and coordinate transcription services for the public meetings.

Analysis of availability survey responses. Telephone surveys with business owners and managers that the project team will conduct as part of the availability analysis will include questions concerning general marketplace conditions including potential barriers associated with obtaining financing, obtaining bonding, and receiving. The project team will analyze results of those questions as part of the qualitative analysis of anecdotal information.

Historical evidence of discrimination. RBS-PPCP will rely on existing sociological, economic, legal, and other research to assess historical evidence of any race- or gender-based discrimination in the local marketplace. The project team will use that information to provide a broader historical context for study results and recommendations.

Assessment of any discrimination complaints. The project team will request information concerning any informal or formal complaints related to discrimination and contracting practices that the City received during the study period. RBS-PPCP will also analyze any available judicial or administrative opinions or data regarding allegations of race- or gender-based discrimination that have been made against contractors, subcontractors, vendors, or local government agencies operating in Jersey City. RBS-PPCP's qualitative analysis of anecdotal information will include an assessment of any such information.

Analysis and reporting. The project team will analyze all resulting anecdotal information and identify and report key themes and comments pertinent to the local contracting industries. Comments from the in-depth anecdotal interviews and public meetings will be summarized in a detailed appendix of the disparity study reports. Several report chapters will draw on information from all of the anecdotal analyses.

Responsible staff. Dr. Kevin Lyons, RBS-PPCP Project Manager, and Ms. Magda Comeau, RBS-PPCP Assistant Project Manager, will be responsible for coordinating and facilitating all public meetings; collecting and assessing discrimination complaints; and analyzing availability survey responses. They will also be responsible for reporting all qualitative results to the City. RBS-PPCP and Rutgers SPAA Data Analyst Graduate Students, will be responsible for assessing historical evidence of discrimination. RBS-PPCP, Rutgers SPAA, and NJCU will be responsible for conducting all in-depth interviews. The City will also help coordinate and facilitate in public meetings.

Task 11 – Recommendations for contracting policies and program elements. The City has asked that the project team provide recommendations for improving the MWBE Supplier Diversity Program and identify revisions necessary to address relevant legal requirements and case law. RBS-PPCP will use information from the study and other relevant sources to provide recommendations to help the City refine its implementation of the MWBE Supplier Diversity Programs including race- and gender- neutral and race- and gender conscious measures that the agency could consider using to encourage the participation of minority, woman, veteran, LGBT-owned businesses in the future. Our recommendations will also help the City identify whether additional staffing or other resources are required to effectively implement the MWBE



Supplier Diversity Program and improve any contracting policies that may act as barriers to minority, woman, veteran, LGBT-owned businesses attempting to work with the City. The project team will conduct an extensive review of existing contracting procedures and existing minority, woman, veteran, LGBT-owned business program measures (for details, see our description of Task 4). In addition, we will complete a review of program measures that other organizations in the local marketplace have implemented, and we will provide assessments of their effectiveness for the City's consideration.

Based on that review, RBS-PPCP will propose recommendations to either enhance existing policies and program measures or to implement additional policies and program measures. At a minimum, RBS-PPCP will make recommendations related to:

- Any contracting policies, regulations or ordinances that serve as barriers to minority, woman, veteran, LGBT-owned businesses;
- Race- and gender-neutral program measures that the City has in place or could consider implementing in the future; and
- Race- and gender-conscious program measures that the City has in place or could consider implementing in the future including an assessment of how to implement such measures in a narrowly tailored manner consistent with relevant legal requirements and case law.

RBS-PPCP will also make recommendations related to data management capabilities and how often the agency should conduct disparity studies in the future. In making its recommendations, RBS-PPCP will take into account the cost for the City to implement any potential measures and the level of human resources necessary to implement any new measures effectively. RBS-PPCP will summarize recommendations for contracting policies and program implementation in separate sections of the disparity study report. Before preparing reports and presentations, the project team will explore results and recommendations with the City and assist the agency in evaluating their potential effectiveness.

Responsible staff. Dr. Kevin Lyons, RBS-PPCP Project Manager, and Ms. Magda Comeau, RBS-PPCP Assistant Project Manager, Rutgers SPAA and NJCU will be responsible for reviewing contracting policies and program measures. RBS-PPCP will also be responsible for reporting recommendations to the City. RBS-PPCP will also be responsible for reviewing program measures that other organizations in the local marketplace have implemented. The Rutgers SPAA, and Rutgers Law School, will review the project team's recommendations to ensure that they are consistent with relevant legal requirements and case law.

Task 12 – Reports and presentations. The RBS-PPCP project team will consider the totality of quantitative and qualitative research that we conduct as part of the disparity study to prepare draft and final disparity study reports for the City. We will also prepare a corresponding oral presentation that we will give in person at the end of the project. We will summarize results related to any disparities in the participation and availability of minority, woman, veteran, LGBT-owned businesses in contracts that the City awarded during the study period. We will examine evidence overall and separately for each relevant racial/ethnic and gender group. The reports and presentation will be written in a clear and concise manner using consistent language and terms. They will be easy to understand; organized in a logical manner; fully illustrated with relevant examples; and consistent with industry-best standards and methodology.



Report. Figure 3 presents the sections that RBS-PPCP anticipates including in the disparity study report. RBS-PPCP will include a detailed executive summary that clearly and succinctly presents key findings and recommendations for the City to consider. As part of the report, we will also include a table of contents that the City can use to easily reference additional chapters and details in the report. RBS-PPCP will discuss an outline of the report at the project initiation meeting and at subsequent management meetings. As necessary, we will reorganize the report to best meet the City's needs.

Figure 3 Proposed chapters and appendices to be included in the draft and final disparity study reports

Report sections

Section ES - Executive Summary
Section 1 - Introduction and Background
Section 2 - Legal Analysis
Section 3 - Marketplace Conditions
Section 4 - Data Collection and Analysis
Section 5 - Availability Analysis
Section 6 - Utilization Analysis
Section 7 - Disparity Analysis
Section 8 - Further Explorations of Disparities
Section 9 - Contracting practices and Program Measures
Section 10 - Recommendations and Conclusions

Appendices

Appendix A - Definitions
Appendix B - Legal Analysis and Framework
Appendix C - Quantitative Analysis of Marketplace Conditions
Appendix D - Utilization Analysis Methodology
Appendix E - Qualitative Analysis of Anecdotal Information
Appendix F - Disparity Results Tables

RBS-PPCP will deliver a full draft of the disparity study report within 10 months of contract execution. As the project team completes individual sections of the draft report, we will submit them to the City for review. After obtaining the City's feedback, RBS-PPCP will make any necessary revisions for the final disparity study report. RBS-PPCP will deliver the final report within 11 months of contract execution. The final disparity study report will address all of the City's feedback on the draft report. We will deliver the final disparity study report in hardcopy and as a searchable electronic format.

Final presentations. The RBS-PPCP project team will give final presentations to the Jersey City Council and other audiences of the City's choosing. The presentations will provide information about the purpose of the disparity study; the project team's methodology; key disparity study results; and recommendations and conclusions. RBS-PPCP will develop the presentations in PowerPoint (or similar format) and will provide them in both hardcopy and electronic format. RBS-PPCP will work with the City to determine the dates, times, and locations for the final presentations.



Other deliverables. RBS-PPCP will provide all data, information, analyses, notes, work papers, records, documentation, and computer databases related to the disparity study when we deliver the final disparity study report or anytime earlier upon request. All programs, records, and materials that we deliver will be compatible with the City's existing systems.

Responsible staff. Dr. Kevin Lyons, RBS-PPCP Project Manager, and Ms. Magda Comeau, RBS-PPCP Assistant Project Manager, will be responsible for compiling and delivering the full draft and final disparity study reports to the City for review and approval. They will also be responsible for developing the final presentation and presenting to the City Council and other audiences of the City's choosing.

I - The City of Jersey City Responsibilities

The responsibilities of the City of Jersey City fall mainly on access to information and people who will be critical to the completion of this disparity study. This includes but is not limited to:

- Access to previous disparity study data
- Access to Procurement Data (Year-range to be determined)
- Assistance with community meetings
- Assistance with Steering/City Council Meetings
- Assistance with City Governmental meetings
- Access to relevant purchasing disparity or diversity legal challenges
- Listing of any City Executive Orders or Regulations associated with supplier diversity/disparity
- Additional requests will be added after our initial kick-off meeting

J - Staffing

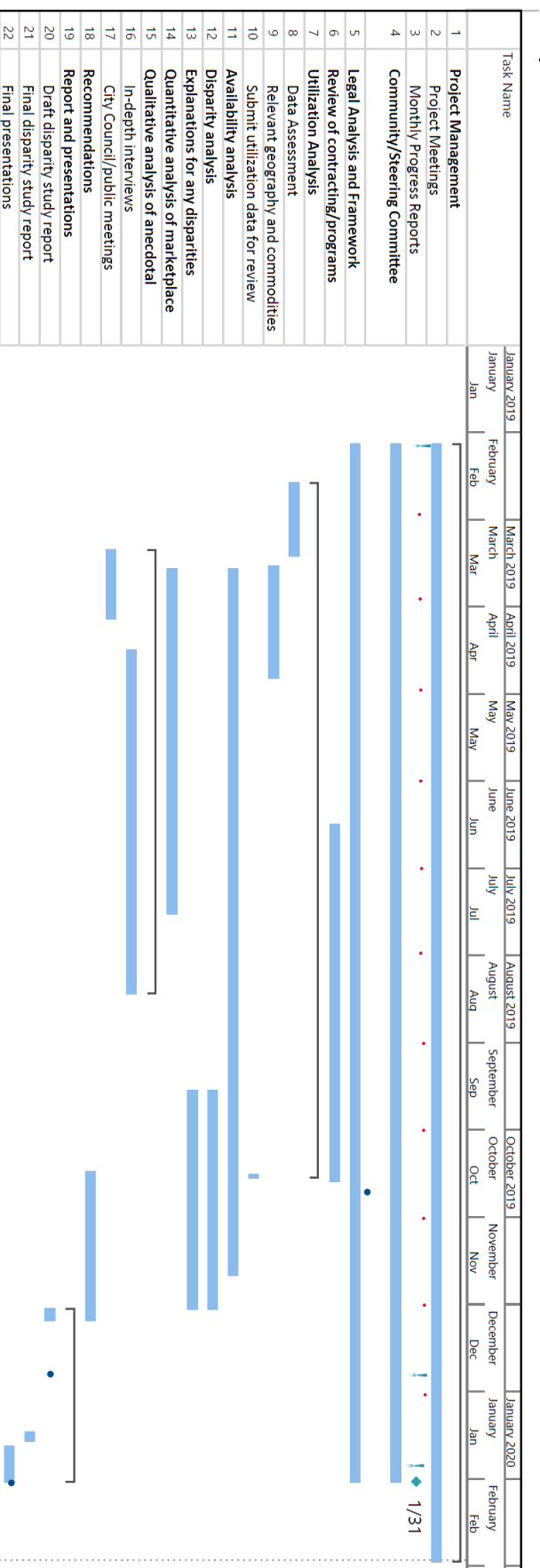
RBS-PPCP's (RBS-PPCP's) project team will only assign key personnel to the 2019 City of Jersey City (the City) Disparity Study who possess specialized expertise in the types of quantitative and qualitative research that are necessary to conducting disparity studies that meet the highest industry and legal standards. Figure 2 presents the staffing structure for key personnel who will contribute to the disparity study. The project team will not replace any key personnel on the disparity study without prior notification and approval from the City.

Timeline

RBS-PPCP will work with the City to conduct the disparity study in a timely manner while maintaining the quality and integrity of the research. RBS-PPCP proposes to complete the study within 11 months of contract execution. Figure 4 presents RBS-PPCP's proposed timeline for the disparity study including major tasks, key subtasks, and specific milestones. Assuming a project initiation date of February 1, 2019, RBS-PPCP will complete the disparity study and deliver the final report and presentation to the City by December 31, 2019.



Figure 4
Proposed Timeline



Note:

- = In Person Meeting
- = Monthly Progress Report
- = Draft Legal Framework (Oct) , Draft Disparity Study (Dec), Draft Report Meeting (Dec), Final Presentation (Jan)
- ◆ = Project Final